

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
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Refer Reply To:
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PLR-119388-07

Date:
August 22, 2007

LEGEND:

Acquiring =

LLC 1 =

LLC 2 =

Sub 1 =

Target =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Business X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Bank 1 =

Bank 2 =

Year 1 =

Dear :

This letter responds to your letter dated April 20, 2007, requesting rulings as to the Federal income tax consequences of a proposed transaction. Additional information

was received on July 13, 2007 and August 22, 2007. The material information submitted for consideration is summarized below.

SUMMARY OF FACTS

Acquiring has one class of common stock outstanding and is the common parent of an affiliated group of corporations that files a consolidated Federal income tax return. Acquiring is the sole member of LLC 1, a limited liability company that is disregarded as an entity separate from Acquiring for Federal income tax purposes and the sole shareholder of Sub 1. Acquiring is engaged in Business X.

Prior to Date 4, Target had one class of common stock and one class of preferred stock outstanding and was engaged in Business X.

Prior to Date 2, LLC 2, a limited liability company taxed as a partnership for Federal income tax purposes, owned all of the preferred stock and more than a% of the common stock of Target.

On Date 1, Acquiring, LLC 1, LLC 2, and Target executed a merger agreement providing that (i) Target would transfer all of its assets to LLC 1 in exchange for common stock of Acquiring and LLC 1's assumption of Target's liabilities, and (ii) Target would distribute the Acquiring common stock in liquidation (the "Merger"). The business purposes for the Merger included increasing depth of customer relationships in the markets of Business X operated by Target and Acquiring as well as cost savings due to operational synergies of the combined corporations.

On Date 2, LLC 2 liquidated. In the liquidation, LLC 2 distributed to its members all of its assets, consisting solely of shares of Target common and preferred stock.

On Date 3, Target declared and paid a dividend of approximately \$b to the holders of Target preferred stock (the Preferred Dividend). The Preferred Dividend was funded from cash of Target in excess of its ordinary operating capital needs.

On Date 4, prior to effecting the Merger, Target redeemed certain shares of Target common stock and options to acquire Target common stock from certain employee-shareholders for an aggregate price of approximately \$c (the Redemption). The price per share was determined based on the valuation of Target used for determining the exchange ratio in the Merger. The Redemption was funded from cash of Target in excess of its ordinary operating capital needs and paid concurrently with the closing of the Merger.

On Date 4, following the Redemption, the parties completed the Merger. Stock representing approximately d% of Acquiring was issued in the Merger, and, following the Merger, former shareholders of Target held less than 50% of the stock of Acquiring.

On Date 4, immediately following the Merger, Bank 1 and Bank 2 (the Lenders) loaned approximately \$e to LLC 1 and Sub 1 (the Loan). The Lenders extended the Loan based on the combined enterprise value of Target and Acquiring and conditioned the Loan on the occurrence of the Merger. Sub 1 used approximately \$f of the Loan proceeds to pay the balance of its loan obligations and LLC 1 used approximately \$g of the Loan proceeds to pay the balance of loan obligations of Target that were assumed by LLC 1 in the Merger. After taking into account various fees, the Lenders transferred \$h to Acquiring (on behalf of LLC 1 and Sub 1), which constituted the remaining balance of the Loan proceeds.

On Date 5, Acquiring declared a dividend in an amount equal to \$i (the "Dividend") to be paid pro rata to shareholders of record of Acquiring on Date 6, including the former Target shareholders that received Acquiring stock in the Merger. Between Date 7 and Date 8, Acquiring paid the Dividend, which was funded in significant part from the Loan proceeds.

REPRESENTATIONS

The following representations have been made in connection with the Merger:

- a) The Merger will be a reorganization within the meaning of § 368(a)(1)(A).
- b) Except for indebtedness incurred by Target more than eighteen months prior to Date 4 for the purposes of redeeming Target preferred stock, which was not undertaken in anticipation of the Merger, the liabilities of Target assumed by Acquiring and the liabilities to which the transferred assets of Target are subject were incurred by Target in the ordinary course of business.

RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows:

1. The cash distributed to Acquiring's shareholders, paid pro rata to all shareholders of record of Acquiring after the Merger, is not money received by the former Target shareholders in the Merger for purposes of § 356 and therefore is subject to taxation pursuant to § 301. See, e.g., Section 1.301-1(l).

CAVEATS

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

We express no opinion about the tax treatment of the transactions described above under other provisions of the Internal Revenue Code or Income Tax Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions described above that are not specifically covered by the above rulings. We specifically express no opinion regarding the Preferred Dividend, the Redemption, the qualification of the Merger as a reorganization under § 368(a)(1)(A), or the transfer of the Loan proceeds to Acquiring.

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representative.

Sincerely,

Michael J. Wilder
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: